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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,755	01/04/2001	Wilhelm Elsner	2384-001896	3769

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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1655

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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09/754755

EXAMINER

ART UNIT	PAPER
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022706

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Commissioner for Patents

Rule 105 Requirement for Information

The claimed geranium plant 'Tikvio' is described in the European Community Plant Breeder's Right (PBR) application number, 981017, published on October 15, 1998 more than one year prior to the effective filing date of this instant application, taken in view of Applicant's admission the sale of the claimed plant in Germany in 1998. The UPOV-ROM publication is a form of public notice. Thus, information regarding the claimed variety, in the form of the publication noted above, was readily available to interested persons of ordinary skill in the art.

Given this information, the applications are printed publications under the guidelines set forth in *In re Wyer*. See *In re Wyer*, 655 F.2d 221,226,210 USPQ 790,794 (CCPA 1981). See also MPEP § 2128. The Plant Breeder's Right applications are enabled if the disclosed cultivar could have been propagated from publicly available materials. One skilled in the art would have the knowledge of how to do so, given the notoriety of various methods of asexual propagation.

A printed publication can serve as a statutory bar under 35 U.S.C. 102(b) if the reference, combined with knowledge in the prior art, would enable one of ordinary skill in the art to reproduce the claimed plant. In *re Le Grice*, 301 F.2d 929,133 USPQ 365 (CCPA 1962). If one skilled in the art could obtain or reproduce the plant from a publicly available source, then a publication describing the plant would have an enabling disclosure. See *Ex parte Thomson*, 24 USPQ2d 1618, 1620 (Bd. Pat. App. & Inter. 1992) ("The issue is not whether the [claimed] cultivar Siokra was on public use or sale in the United States but, rather, whether 'Siokra' seeds were available to a skilled artisan anywhere in the world such that he/she could attain them and make/reproduce the cultivar Siokra disclosed in the cited publications.").

The publication cited above disclose the claimed variety and Applicant admits that the instant cultivar was available, more than one year prior to the effective filing date of this instant application. However, a question remains as to the accessibility of any foreign sales of the claimed plant, the reproducibility of the claimed plant and whether one of ordinary skill in the art would have known of any foreign sale. The foreign sale must not be an obscure, solitary occurrence that would go unnoticed by those skilled in the art. One of ordinary skill in the art would have known where to obtain the claimed plant. For example, by searching the Internet for the breeder, "ELSNER PAC JUNGPFANZEN" from UPOV-ROM Plant Variety Database at <http://www.pac-Elsner.com/uk/pelargonien/pelargonien-antik.html>, one of ordinary skill could have clicked on "Contact" and contact ELSNER PAC JUNGPFANZEN by mail, telephone number, fax number or e-mail. With that contact information, one of ordinary skill in the art could check the availability and where to purchase the claimed plant.

This requirement is for information under 37 CFR 1.105. A complete reply must include a complete response. The time period for reply to the attached requirement is two months.

In order to consider whether a 102(b) rejection should be applied, the Examiner is requesting information pertaining to the claimed cultivar.

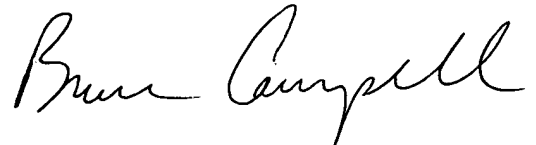
Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiners' supervisor, Terry McKelvey, can be reached at (571) 272-0775. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme



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